

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ESTATE OF JAMES C. WYATT, II, and.
LAYDELL WYATT,

Plaintiffs,

v.

Case Number 09-14919
Honorable David M. Lawson
Magistrate Judge Michael J. Hluchaniuk

WAMU/JP MORGAN CHASE BANK,
PATHWAY FINANCIAL, and Trott
AND Trott, P.C.,

Defendants.

**ORDER OVERRULING PLAINTIFF'S OBJECTIONS TO REPORT AND
RECOMMENDATION, ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION, AND DENYING PLAINTIFFS'
MOTIONS TO STRIKE AFFIRMATIVE DEFENSES**

Presently before the Court is the report issued on May 25, 2010 by Magistrate Judge Michael J. Hluchaniuk pursuant to 28 U.S.C. § 636(b), recommending that the Court deny the plaintiffs' motions to strike the defendants' affirmative defenses as untimely under Federal Rule of Civil Procedure 12(f). Magistrate Judge Hluchaniuk's report also analyzed the merits of the plaintiffs' motions and determined that the plaintiff had not demonstrated that the defendants' affirmative defenses were wholly unrelated to the claims, actually sought a decision on the merits on contested issues in the lawsuit, and would suffer no prejudice from the denial of the motions to strike. The plaintiffs filed timely objections challenging only the magistrate judge's analysis on the merits of their motions; the plaintiffs did not object to the magistrate judge's conclusion that the motions were untimely.

The magistrate judge's report explicitly states that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report. The magistrate

judge also cautioned that the objections must be specific and that filing objections to some aspects of the report would not preserve other objections that the parties failed to raise. Rep. & Rec. at 7 (citing *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991)). “[T]he failure to file specific objections to a magistrate’s report constitutes a waiver of those objections.” *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir.2004).

Since the plaintiffs did not challenge the magistrate judge’s conclusion that the motions to strike were untimely, the plaintiffs have waived that argument and the Court need not address this issue because the plaintiffs’ silence functions as acceptance of the report on this point. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985) (holding that the failure to object to the magistrate judge’s report releases the Court from its duty to independently review the motion); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987). This issue is dispositive and provides sufficient grounds for the Court to overrule the plaintiffs’ objections and deny the motions. Because the plaintiffs failed to object to this ground, the Court will adopt the magistrate judge’s recommendation and find that the motions to strike were untimely under Federal Rule of Civil Procedure 12(f).

In addition, the Court agrees with the findings and conclusions of the magistrate judge that the motions to strike call for factual determinations, for which summary judgment or trial is the more appropriate procedure.

Accordingly, it is **ORDERED** that the plaintiff’s objections to the Magistrate Judge’s Report and Recommendation are **OVERRULED**.

It is further **ORDERED** that the Magistrate Judge’s Report and Recommendation [dkt # 75] is **ADOPTED**.

It is further **ORDERED** that the plaintiffs' motions to strike certain affirmative defenses [dkt # 19 and 21] are **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: July 20, 2010

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 20, 2010.

s/Teresa Scott-Feijoo
TERESA SCOTT-FEIJOO